

CCASE:  
NACCO MINING V. MSHA & UMWA  
DDATE:  
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FMSHRC-WDC  
NOV 13, 1985

THE NACCO MINING COMPANY

v.

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA)

Docket No. LAKE 85-87-R

and

UNITED MINE WORKERS OF  
AMERICA

BEFORE: Backley, Acting Chairman; Lastowka and Nelson,  
Commissioners

ORDER

BY THE COMMISSION:

On October 17, 1985, the Commission returned this proceeding to the administrative law judge with instructions to proceed to a final disposition on the merits. In this order the Commission explained why an off-the-record conversation between the presiding judge and a witness who had appeared before him, although ex parte, was not a prohibited ex parte communication. The Commission also explained why a further hearing ordered by the judge was unwarranted. Contrary to a request by the operator that the case be reassigned, the Commission further explained why the presiding judge should be given an opportunity to decide the case based on the record before him in accordance with governing procedures.

On November 5, 1985, the judge placed in the record a "Statement of Nonacquiescence". We attach the judge's statement to this order

as a means of demonstrating its content that is preferable to any attempt to summarize it. In his statement the judge declares that he "cannot, in good conscience, become a party even tacitly to the Commission's suppression order or permit my silence to be so construed regardless of the consequences in terms of further political retaliation" (Statement at 2-3), and he states that he is "compelled to disassociate myself from the strictures on decisional autonomy implicit in the Commission's order of remand." Statement at 6.

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In view of the judge's expressed refusal to follow the order of the Commission in this matter, his jurisdiction in this proceeding is hereby terminated. This case is reassigned to the Chief Administrative Law Judge for the completion of the proceedings on the merits that was previously ordered.

Richard V. Backley, Acting Chairman

James A. Lastowka, Commissioner

L. Clair Nelson, Commissioner